

GRACE COOLEY COLEMAN
LEOTA FERRELL

IBLA 78-46

78-65

Decided May 26, 1978

Consolidated appeals from decisions by the New Mexico State Office, Bureau of Land Management, returning applications for recordable disclaimers of interest. NM-30300 (OK), NM-30569 (OK).

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Disclaimers of Interest -- Federal Land Policy and Management Act of 1976: Rules and Regulations -- Regulations: Force and Effect as Law

The Bureau of Land Management should suspend action on applications for recordable disclaimers of interest filed pursuant to sec. 315 of the Federal Land Policy and Management Act of 1976 where no regulations have been issued under which action may be taken and where there is no contrary policy directive.

APPEARANCES: Denis C. Roberts, Esq., of Oklahoma City, Oklahoma, for appellant Coleman; Herbert M. Graves, Esq., of Sullivan, Graves & Combs, Oklahoma City, for appellant Ferrell.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This decision consolidates the appeals of Grace Cooley Coleman (IBLA 78-46, NM-30300 (OK)) and Leota Ferrell (IBLA 78-65, NM-30569 (OK)) from the September 23, 1977, decisions of the New Mexico State Office, Bureau of Land Management (BLM), which returned each appellant's application for a recordable disclaimer of interest.

The issuance of recordable disclaimers of interest is authorized under certain conditions by section 315 of the Federal Land Policy

and Management Act of 1976 (FLPMA), 43 U.S.C.A. § 1745 (West Supp. 1977). The disclaimers are intended to remove clouds on titles to land where the United States determines that it has no interest. The disclaimers "have the same effect as a quit-claim deed from the United States." 43 U.S.C.A. § 1745 (c). Appellants filed conflicting applications for disclaimers of interest from the United States of lots 4 and 5, sec. 31, T. 13 N., R. 11 W., Indian Meridian, Oklahoma.

Appellant Coleman's application was filed in the BLM State Office on March 10, 1977, and appellant Ferrell's on May 5, 1977. ^{1/} A memorandum dated April 28, 1977, from the Director, BLM, to the BLM New Mexico State Director informed the State Director that no action should be taken concerning appellant Coleman's application until guidelines and procedures are issued. In March 1977, a field examination by a BLM riparian specialist was ordered. His report, dated June 14, 1977, was then submitted to the Field Solicitor, Santa Fe, New Mexico, for his opinion. He replied by memorandum dated August 16, 1977, and the State Office then issued its decisions.

The BLM decisions noted at the outset that regulations implementing 43 U.S.C.A. § 1745 (West Supp. 1977) had not been issued. (The regulations have not been issued as of the date of this decision.) The decisions also note that the riparian specialist details in his report a history of the movements of the Canadian River. The decisions do not summarize those movements. Briefly, when section 31 was surveyed in 1872, lots 4 and 5 were riparian to the north bank of the Canadian River. At the present time, lots 4 and 5 are south of the river and apparently are no longer riparian to the river. From 1904 to 1941, the river changed several times, either by expanding its banks or shifting its course. The State Office, relying on the opinion of the Field Solicitor, then concluded that title to lots 4 and 5 remained in the United States. This conclusion was reached in part because the Oklahoma Court of Appeals determined in Cooley v. Kabriel, No. 47,885 (Div. 2 January 22, 1975), ^{2/} that the Canadian River

^{1/} The application of appellant Ferrell asked for a patent to the land, but refers to the code provision for a disclaimer. It is unclear if she is conceding title is in the United States or only claiming there is a cloud on the title. The BLM State Office considered the application under the disclaimer provision, the appeal is addressed to issues under that provision, and this decision shall be based on that provision and on appellant's request made on appeal that a disclaimer be issued to her benefit.

^{2/} This was a quiet title action brought by appellant Coleman's brother against the record title holders of land he claimed by accretion. Appellant Ferrell was a defendant in that action and the United States was not a party.

shifted its course in 1941 by avulsion and thereafter title to land remained unchanged by the change in the river's course.

In their respective statements of reasons, both appellants argue that two July 17, 1934, letters signed by the Acting Assistant Commissioner, General Land Office (predecessor of BLM), prevent the United States from now asserting title to lots 4 and 5. In one letter, the Acting Assistant Commissioner denied the homestead application for lots 4 and 5 of William H. Lesperance in part because a field examination of the area indicated that lots 4 and 5 were destroyed in the 1904 flood of the Canadian River by the process of erosion and not by avulsion. The other letter, addressed to appellant Coleman's father, states "this office will assert no claim to the said lots or to any portion of the area formed by accretion and attaching to the lands surveyed and disposed of on the south bank of the river." Appellant Coleman makes the additional argument that her father and predecessor in interest took possession of lots 4 and 5 in 1937, constructed improvements and paid taxes on them from 1948-1970. Appellant Ferrell makes the additional argument that she should not be denied her "right to a disclaimer under the Act" by BLM's failure to issue regulations.

[1] In its decisions, the BLM State Office stated: "Since title to the above lands is held by the United States, your request for disclaimer of interest is herewith returned." The return of the applications for the stated reason was, in effect, a rejection of the applications. In essence, the State Office has processed appellants' applications without benefit of regulations. Moreover, the State Office was directed by the BLM Director to take no action on appellant Coleman's application.

A somewhat analogous situation was considered by the Board on appeals involving applications under the Carey Act, as amended, 43 U.S.C. § 641 et seq., (1970). The regulations pertaining to the Carey Act had been deleted from Title 43 of the Code of Federal Regulations in 1970. The Board ruled that the deleted regulations could not be used as a basis for rejecting applications under the Carey Act nor as a basis for rejecting conflicting desert land entry applications. Kevin D. Ellis, 24 IBLA 387 (1976); Idaho Department of Water Resources, 24 IBLA 314 (1976). In each instance, the Board ordered action on the application suspended in the absence of a specific statutory directive or regulatory criteria requiring rejection. Id.; cf. Idaho Department of Water Resources, 21 IBLA 210 (1975) (Application rejected under other regulations).

We are unaware of any general directive regarding adjudication of disclaimer applications prior to the promulgation of regulations. Section 315(c) of FLPMA, 43 U.S.C.A. § 1745(c), refers to the issuance of a disclaimer under regulations promulgated under the Act. Clearly,

a disclaimer should not issue until regulations have been formulated. It is possible that regulations when issued will specify the type of showings an applicant is to make to help the Department in making its title determination, and will prescribe the fact-finding and review procedures and standards.

We note that regulation 43 CFR 2091.1 generally directs BLM to accept all applications for filing. The circumstances listed in that regulation for rejecting applications rather than suspending them are not applicable here. In the absence of contrary directives, we believe that suspension of appellants' applications pending promulgation of regulations is appropriate here before final administrative action is taken on the applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for further action consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Joseph W. Goss
Administrative Judge

